

Introduced by Senator Escutia

February 7, 2005

An act to amend Sections 791.10 and 791.12 of the Insurance Code, relating to insurance underwriting.

LEGISLATIVE COUNSEL'S DIGEST

SB 150, as introduced, Escutia. Insurance: adverse underwriting decisions.

Existing law requires that, in the event of an adverse underwriting decision, as defined, the insurance institution or agent responsible for the decision comply with certain requirements, including a requirement to either provide the consumer with the specific reasons for the adverse underwriting decision in writing or advise the person that upon written request he or she may receive the specific reasons in writing. Existing law requires the institution or agent, upon receipt of a written request, to provide the consumer with the specific items of personal and privileged information that support those reasons, except as specified.

This bill would require the insurance institution or agent to provide the reasons for the adverse underwriting decision in all instances. It would further provide that, if the institution or agent fails to provide the reasons or the information supporting them to the consumer, the institution or agent may not rely upon that information to make any adverse underwriting decision, except as specified. The bill would require that a specified notice be included in any communication notifying a consumer of an adverse underwriting decision.

Existing law prohibits an insurance institution or agent from basing an adverse underwriting decision on various types of information, including personal information received from an insurance-support

organization whose primary source of information is insurance institutions, except as specified.

This bill would add privileged information to this prohibition.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 791.10 of the Insurance Code is
2 amended to read:

3 791.10. (a) In the event of an adverse underwriting decision
4 the insurance institution or agent responsible for the decision
5 shall *provide the applicant, policyholder, or individual proposed*
6 *for coverage, in writing, with each of the following:*

7 ~~(1) Either provide the applicant, policyholder or individual~~
8 ~~proposed for coverage with the~~ *The* specific reason or reasons for
9 the adverse underwriting decision ~~in writing or advise such~~
10 ~~person that upon written request he or she may receive the~~
11 ~~specific reason or reasons in writing.~~

12 ~~(2) Provide the applicant, policyholder or individual proposed~~
13 ~~for coverage with a~~ *A* summary of the rights established under
14 subdivision (b) and Sections 791.08 and 791.09.

15 ~~(b) Upon receipt of a written request within 90 business days~~
16 ~~from the date of the mailing of notice or other communication of~~
17 ~~an adverse underwriting decision to an applicant, policyholder or~~
18 ~~individual proposed for coverage, the insurance institution or~~
19 ~~agent shall furnish to such person within 21 business days from~~
20 ~~the date of receipt of such written request:~~

21 ~~(1) The specific reason or reasons for the adverse underwriting~~
22 ~~decision, in writing, if such information was not initially~~
23 ~~furnished in writing pursuant to paragraph (1) of subdivision (a).~~

24 ~~(2)~~

25 (3) The specific items of personal and privileged information
26 that support ~~those the reason or~~ reasons *for the adverse*
27 *underwriting decision*; provided, however:

28 (A) The insurance institution or agent shall not be required to
29 furnish specific items of privileged information if it has a
30 reasonable suspicion, based upon specific information available
31 for review by the commissioner, that the applicant, policyholder
32 or individual proposed for coverage has engaged in criminal

1 activity, fraud, material misrepresentation or material
2 nondisclosure.

3 (B) Specific items of medical record information supplied by a
4 medical care institution or medical professional shall be
5 disclosed either directly to the individual about whom the
6 information relates or to a medical professional designated by the
7 individual and licensed to provide medical care with respect to
8 the condition to which the information relates, whichever the
9 individual prefers.

10 Mental health record information shall be supplied directly to
11 the individual, pursuant to this subdivision, only with the
12 approval of the qualified professional person with treatment
13 responsibility for the condition to which the information relates.

14 ~~(3)–~~

15 (4) The names and addresses of the institutional sources that
16 supplied the specific items of information given pursuant to
17 paragraph ~~(2) of subdivision (b) (3)~~; provided, however, that the
18 identity of any medical professional or medical care institution
19 shall be disclosed either directly to the individual or to the
20 designated medical professional, whichever the individual
21 prefers.

22 *(b) Except as provided in subparagraph (A) of paragraph (3)*
23 *of subdivision (a), if the insurance institution or agent fails to*
24 *provide the reason or reasons for the adverse underwriting*
25 *decision and the specific personal or privileged information that*
26 *supports the reason or reasons, the insurance institution or agent*
27 *shall not rely upon that information to make any adverse*
28 *underwriting decision.*

29 *(c) Except as provided in subparagraph (A) of paragraph (3)*
30 *of subdivision (a), any communication from an insurance*
31 *institution or agent that provides the applicant, policyholder, or*
32 *individual proposed for coverage with notice of an adverse*
33 *underwriting decision shall include the following statement:*

34 *“You are legally entitled to the reasons for an adverse action*
35 *and the specific personal or privileged information that supports*
36 *those reasons, if applicable. If that information is not provided to*
37 *you, the information cannot be used to decline your application,*
38 *terminate your coverage, or charge a higher rate, or otherwise*
39 *be applied against you in this transaction.”*

40 ~~(e)–~~

1 (d) The obligations imposed by this section upon an insurance
2 institution or agent may be satisfied by another insurance
3 institution or agent authorized to act on its behalf.

4 ~~(d)~~

5 (e) When an adverse underwriting decision results solely from
6 an oral request or inquiry, the explanation of reasons and
7 summary of rights required by subdivision (a) may be given
8 orally to the extent that such information is available.

9 SEC. 2. Section 791.12 of the Insurance Code is amended to
10 read:

11 791.12. No insurance institution or agent may base an adverse
12 underwriting decision in whole or in part on the following:

13 (a) On the fact of a previous adverse underwriting decision or
14 on the fact that an individual previously obtained insurance
15 coverage through a residual market mechanism; provided,
16 however, an insurance institution or agent may base an adverse
17 underwriting decision on further information obtained from an
18 insurance institution or agent responsible for a previous adverse
19 underwriting decision. The further information, when requested,
20 shall create a conclusive presumption that the information is
21 necessary to perform the requesting insurer's function in
22 connection with an insurance transaction involving the individual
23 and, when reasonably available, shall be furnished the requesting
24 insurer and the individual, if applicable.

25 (b) On personal *or privileged* information received from an
26 insurance-support organization whose primary source of
27 information is insurance institutions; provided, however, an
28 insurance institution or agent may base an adverse underwriting
29 decision on further personal information obtained as the result of
30 information received from an insurance-support organization.

31 (c) On the fact that an individual has previously inquired and
32 received information about the scope or nature of coverage under
33 a residential fire or property insurance policy, if the information
34 is received from an insurance-support organization whose
35 primary source of information is insurance institutions and the
36 inquiry did not result in the filing of a claim.